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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/859,705	05/17/2001	Michael Kai-Yin Au	YOR920000770US1	3974

35526 7590 06/05/2007

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ART UNIT	PAPER NUMBER
3714	

MAIL DATE	DELIVERY MODE
06/05/2007	PAPER

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/859,705
Filing Date: May 17, 2001
Appellant(s): AU ET AL.

Theodore D. Fay

For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 01/08/07 appealing from the Office action mailed 05/18/06.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,968,110	Westrope et al	10-1999
6,167,380	Kennedy et al	12-2000
2001/0032148	Yamazoe et al	10-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-8, 11-15, 32-39 and 42-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Westrope et al (US 5,968,110) in view of Kennedy (US 6,167,380).

As per claims 1, 3, 8, 11-15, 32-35 and 42-46, Westrope et al teach a method in a primary data processing system for managing a catalog (fig. 5, catalog data processor 67), method comprising: sending a catalog and user information to a plurality of secondary data processing system located in a network data processing system (marketing data processor 75, accounting processor 73); receiving an order from one of the plurality of secondary data processing systems and processing the order, in response to receiving the order (fig. 5, 43). Westrope does not explicitly disclose allocating the inventory but Kennedy discloses for allocating products to sellers, for managing available to promise (ATP) and making promises to fulfill customer requests

It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the allocation of products as taught by Kennedy into the data processing as taught by Westrope because it would provide an automatic allocation policy that allows the

organization to designate a forecast entry such that the available-to-promise (ATP) product is always zero (col. 3, lines 18-21).

As per claim 2, Westrope discloses a system that sends an update to the catalog to the plurality of secondary data processing systems as claimed (col. 9, line 66 to col. 10, line 3).

As per claims 6, 7, 38, and 39, Westrope discloses a system that is capable of providing a shopping card data (items ordered by the user are stored in a safe place) from the secondary data processing system as claimed.

As per claims 4, 5, 36 and 37, neither Westrope nor Kennedy discloses allocation of the inventory upon a detection of a condition which is a threshold but it is well known to set a condition when determining whether or not an inventory is necessary because it would help determining the location of missing products, the examiner takes Official notice as such.

Claims 9, 10, 40, and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Westrope et al (US 5,721,832) in view of Yamazoe et al (US 2001/0032148).

As per claims 9, 10, 40 and 41, neither Westrope nor Kennedy discloses a catalog that is sent in a markup language and wherein the markup language is extensible markup language but Yamazoe discloses an application service on a network having a WWW (World Wide Web) voluntarily managed by the selling enterprise through the use of the XML (extensible markup language).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the allocation of products as taught by Kennedy into the data processing as taught by Westrope because it would provide an automatic allocation policy that allows the

organization to designate a forecast entry such that the available-to-promise (ATP) product is always zero (col. 3, lines 18-21). It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the extensible markup language (XML format) taught by Yamazoe et al into the combined system of Westrope and Kennedy because it would ensure a safe transmission of the information or document through a network.

(10) Response to Argument

Applicant argues that Westrope does not teach sending catalog and user information, to a plurality of secondary data processing systems. Contrary to Applicant's arguments, the catalog services data processor (fig.5, (marketing data processor and 67) is coupled to the secondary data processing "systems accounting data processor) so that the catalog and user information can be sent or transmitted to the secondary data processing systems. Applicant's arguments about Tsevd0s are moot in view of the newly added reference. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See In re McLaughlin, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so

found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and In re Jones, 958 F.2d347, 21 USPQ2d 1941 (Fed. Cir. 1992).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Ronald Laneau

Ronald Laneau

Primary Examiner

Conferees:

Andrew Fischer, for

Alexander Kalinowski

Alexander Kalinowski for

Vincent Millin